REMARKS/ARGUMENTS

Claims 1-33 are pending in this application. Claims 1-33 presently stand rejected under 35 U.S.C. §103(a). Based on the foregoing remarks, Applicants respectfully request reconsideration and allowance of claims based on this Response, and withdrawal of all rejections.

Amendments

Claims 19, 20, 22, 23, and 26 have been amended to correct grammatical errors. No new matter was added in making these amendments and support for these changes can be found throughout the specification, and in particular at page 8, line 1 to page 24, line 25.

Claim Rejections Under 35 U.S.C. §103(a)

Claims 1, 4-11, 14-18, 21, 24 and 25 have been rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent 3,366,494 issued to Bower et al. (hereinafter "Bower"). Claims 2, 3, 9, 12, 13, 19, 20, 22 and 23 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Bower, and further in view of U.S. Patent No. 2,883,286 issued to Musser. Claims 26-33 are rejected under 35 U.S.C. §103(a) as being unpatentable over Bower in view of Musser as applied to claims 1-25 above, and further in view of a Food Engineering Article (hereinafter "Article").

I. Rejection of Claims 1, 4-11, 14-18, 21, 24 and 25

Claims 1, 4-11, 14-18, 21, 24 and 25 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Bower. Applicants' invention is not rendered obvious over Bower. Applicants respectfully traverse the rejection. Bower does not disclose each and every limitation of the rejected claims as written.

More particularly, the cited reference (Bower) does not disclose or suggest an edible spread composition having 10-45% plant fiber-containing material, 0.5-10% edible oil, 10-60% water and an emulsifier, as called for in independent claims 1 and 14. The emulsifier may further be present in an amount from 0.05-2%. The edible spread composition may then be packaged in a container under positive pressure, and stored for an amount of time and dispensed without oil separation.

Rather, Bower provides pressurized aerosol food emulsions -- i.e., a foam -- that are comprised of the combination of a water-based fluid foodstuff and an emulsion, where the emulsion comprises 15-80% aqueous phase, 20-75% edible oil, and 0.1-12% emulsifier. The emulsion is added to the water-based foodstuff in amounts of from 10-40% by weight, thus the remainder comprises the foodstuff (i.e., 60-90%). The aerosol package dispenses the foodstuff in a foam form.

As noted, the present invention provides an edible spread composition whereas Bower relates to a foam composition. These terms are used in the art to denote very different types of compositions. As noted in the present specification, the edible spreads of the present invention generally have densities of greater than about 1.05 g/ml and preferably about 1.15 to 1.3 g/ml. As one skilled in the art would understand, foams such as those disclosed in Bower would be expected to have densities less than 1 g/ml (and generally much less than 1 g/ml). Moreover, one of ordinary skill in the art would not expect that teachings regarding forming foams would be especially relevant to the problem of preparing an edible spread containing an oil that is resistant to oil separation.

On page 2 of the Office Action, the Examiner states that microcrystalline cellulose and raspberry puree disclosed in Bower are considered sources of dietary fiber. Microcrystalline cellulose is used in Bower as a part of the emulsifier within the emulsion, as shown in Example 1. The emulsifier makes up at most 12% of the total emulsion. If the emulsifier is comprised entirely of microcrystalline cellulose and is added to the emulsion at the higher amount, i.e., 12%, this still would only yield about 4.8% microcrystalline cellulose in the entire food emulsion once it is added to the water-based foodstuff at 40%, i.e., the

higher end of the range given for the emulsion[1]. Applicants' disclose a fiber-containing material in the range of 10-45%; Bower at most would comprise 4.8% microcrystalline cellulose which is well below this range. As recognized by the Examiner, on page 2 of the Office Action, Applicants' claims differ from Bower in the amount of fiber in the product. It is not obvious to increase the amount of microcrystalline cellulose beyond 4.8% in the total final product (or beyond 12% in the emulsion), since that is the upper limit of the emulsifier within the emulsion that is disclosed in Bower. Furthermore, the microcrystalline cellulose acts as a stabilizer in combination with an emulsifying agent to make up the emulsion and, therefore, the microcrystalline cellulose could not be present in amounts as high as 4.8% (or 12% in the emulsion before addition to the final product) because at least one emulsifying agent is also required. Therefore, even if it is desired to enhance a nutritive quality of fiber in the snack, as stated on page 2 of the Office Action, it would not be obvious to increase the amount of the microcrystalline cellulose in the emulsifier to achieve this result since the microcrystalline cellulose is being used for a different purpose and cannot reach or exceed 4.8% in the final product, or 12% in the emulsion.

Additionally, if the raspberry puree used in Example 1 is considered to be a fiber-containing material, or other fruits for that matter, the amount used in the final product would be in the range from 60-90%, or 74.4% as disclosed in Example 1, which is already above that of Applicants' fiber range. It would not be obvious to decrease this range of fruit puree to that of Applicants' range of 10-45% fiber-containing material, especially since the fruit is the main component of the product and the taste of the fruit product is most likely the main concern in determining the fruit amounts used. Furthermore, if the goal is to enhance the nutritive quality of fiber in the snack, as mentioned in the Office Action on page 2, the raspberry puree amount in Example 1 would not be decreased but rather increased. Therefore, it is not obvious to modify the fiber amounts within Bower to provide

1. For example, assuming a total emulsion amount of 100 kg, if 12% microcrystalline cellulose is used in the emulsion, then 12 kg would be needed of microcrystalline cellulose for the emulsion. If 40% of the emulsion is added to the final product, then 12 kg microcrystalline cellulose x 0.40 = 4.8 kg microcrystalline cellulose in the final product, or 4.8% ((4.8kg/100kg total final product) x 100% = 4.8%).

Applicants' fiber amounts since the fiber-containing materials in Bower are utilized for different purposes than to provide a certain quantity of fiber in the product.

The Examiner further states on page 2 of the Office Action that Bower discloses similar emulsifiers as used by Applicants and that it would have been obvious to utilize the same emulsifier. Even so, the amount of microcrystalline cellulose and fruit puree (if taken to equal the fiber-containing material amounts, as stated by Examiner) are not the same as Applicants' fiber amount, as discussed above, so even if the same emulsifier were used the final products still would be different. Therefore, there is nothing in Bower or in the art to suggest modifying or adjusting these amounts in Bower to equal the ranges used in Applicants' invention.

The remaining claims (i.e., claims 10, 11, 15-17, 24, and 25) addressing the physical properties of the spread are not discussed in Bower and therefore are not anticipated by Bower nor are obvious over Bower. Moreover, these are not properties that one of ordinary skill in the art would expect a foam product as described by Bower to even have. This highlights the difference between a spread (present invention) and a foam (Bower disclosure). However, even if these properties were disclosed in Bower, which they are not, Bower still would not disclose or suggest Applicants' product for the reasons stated above in regards to the independent claims 1 and 14, since the remaining claims also depend upon claims 1 and 14.

Therefore, independent claims 1 and 14, and dependent claims 4-11, 15-18, 21, 24, and 25 that depend therefrom, are therefore allowable for the reasons discussed above. Thus, Applicants respectfully submit that the cited reference does not disclose or suggest the invention as claimed in claims 1, 4-11, 14-18, 21, 24, and 25, nor are these claims rendered obvious over Bower. Applicants respectfully request reconsideration and allowance of these claims.

II. Rejection of Claims 2, 3, 9, 12, 13, 19, 20, 22 and 23

Claims 2, 3, 9, 12, 13, 19, 20, 22 and 23 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Bower in view of Musser. Applicants respectfully traverse this rejection because Applicants' invention is not rendered obvious by Bower nor Musser taken alone or together. There is no motivation to combine these references, and even if combined, the references still do not disclose, describe, or suggest Applicants' invention. As stated above, Applicants' invention is not obvious in view of Bower, and further, Musser does not correct these and other deficiencies in Bower to make Applicants' invention obvious.

It is not obvious to combine a chocolate foam topping containing milk and cocoa and/or chocolate liquor as disclosed in Musser with a water-based fluid foodstuff in an oil and water emulsion forming a foam, as in Bower, using foodstuffs that previously had difficulty forming foams. Musser identifies its chocolate foam as having a heavier body foam which stiffens and/or sets after dispensing. There is no motivation to combine foams used in different ways and garnering different results (i.e., Bower creating foams from difficult to foam products and Musser providing stiff chocolate foams upon dispensing) to obtain a product of Applicants' invention.

Additionally, it is not obvious to combine a patent discussing chocolate foam (i.e., Musser) with a water-based foodstuff emulsion (i.e., Bower) to obtain a peanut spread. It is not obvious to modify a chocolate foam to also apply to a peanut spread, since the two require a different compositional makeup and have different physical properties that may necessitate different ingredients to provide a foam product.

Thus, Applicants respectfully submit that claims 2, 3, 9, 12, 13, 19, 20, 22 and 23 are not rendered obvious over Bower alone or in combination with Musser. Applicants respectfully request that this rejection be withdrawn.

III. Rejection of Claims 26-33

Claims 26-33 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Bower and Musser and further in view of the Food Engineering Article. Applicants respectfully traverse this rejection because as stated above, Applicants' invention is not obvious in view of Bower, either alone or in combination with Musser. The Article does not correct these and other deficiencies in Bower and/or Musser to make Applicants' invention obvious.

The Article does not say anything about containing a floating plunger arrangement, as stated in the Office Action on page 4. Furthermore, detail about the features of an aerosol or piston type container is not disclosed in the Article. Even if a similar type container were disclosed in the Article, which it is not, claims 26-33 depend from independent claim 14 which further requires using the container with a certain type of food product, the edible spread composition. Since none of the above-mentioned references discloses a similar composition product, a container that is the same would not make these claims obvious in view of references that do not disclose a similar composition product.

Thus, Applicants respectfully submit that claims 26-33 are not rendered obvious over Bower alone or in combination with Musser and/or the Article. Applicants respectfully request that this rejection be withdrawn.

CONCLUSION

In view of the foregoing, Applicants submit that claims 1-33 are patentable over the cited references and hereby respectfully request reconsideration and allowance of claims 1-33.

The Commissioner is hereby authorized to charge any additional fees which may be required in the Application to Deposit Account No. 06-1135.

Respectfully submitted,

FITCH, EVEN, TABIN & FLANNERY

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By: _____
Richard A. Kaba
Registration No. 30,562

120 South LaSalle Street
Suite 1600
Chicago, Illinois 60603
Telephone: (312) 577-7000
Facsimile: (312) 577-7007